

# **2013 DRAFTING REQUEST**

## **Bill**

Received:	<b>9/24/2012</b>	Received By:	<b>agary</b>
Wanted:	<b>As time permits</b>	Same as LRB:	<b>-1566</b>
For:	<b>André Jacque (608) 266-9870</b>	By/Representing:	<b>Michael Murphy</b>
May Contact:		Drafter:	<b>agary</b>
Subject:	<b>Beverages</b>	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**  
 Requester's email: **Rep.Jacque@legis.wi.gov**  
 Carbon copy (CC) to:

## **Pre Topic:**

No specific pre topic given

## **Topic:**

Private right of action for underage alcohol violations; underage exceptions for law enforcement for compliance checks

## **Instructions:**

Redraft of 2011 LRB-1803, as amended by a2231 and a2234

## **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 9/26/2012	kfollett 10/3/2012		_____			
/P1	agary 2/1/2013		jmurphy 10/3/2012	_____	mbarman 10/3/2012		
/1		kfollett 2/1/2013	rschluet 2/1/2013	_____	srose 2/1/2013	lparisi 2/25/2013	

FE Sent For:

**<END>**

## **2013 DRAFTING REQUEST**

### **Bill**

Received: <b>9/24/2012</b>	Received By: <b>agary</b>
Wanted: <b>As time permits</b>	Same as LRB:
For: <b>Andre Jacque (608) 266-9870</b>	By/Representing: <b>Michael Murphy</b>
May Contact:	Drafter: <b>agary</b>
Subject: <b>Beverages</b>	Addl. Drafters:
	Extra Copies:

Submit via email: **YES**  
 Requester's email: **Rep.Jacque@legis.wi.gov**  
 Carbon copy (CC) to:

### **Pre Topic:**

No specific pre topic given

### **Topic:**

Private right of action for underage alcohol violations; underage exceptions for law enforcement for compliance checks

### **Instructions:**

Redraft of 2011 LRB-1803, as amended by a2231 and a2234

### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 9/26/2012	kfollett 10/3/2012		_____ _____			
/P1	agary 2/1/2013		jmurphy 10/3/2012	_____ _____	mbarman 10/3/2012		
/1		kfollett 2/1/2013	rschluet 2/1/2013	_____ _____	srose 2/1/2013		

FE Sent For:

**<END>**

**2013 DRAFTING REQUEST**

**Bill**

Received: **9/24/2012** Received By: **agary**  
Wanted: **As time permits** Companion to LRB:  
For: **Andre Jacque (608) 266-9870** By/Representing: **Michael Murphy**  
May Contact: Drafter: **agary**  
Subject: **Beverages** Addl. Drafters:  
Extra Copies:

Submit via email: **YES**  
Requester's email: **Rep.Jacque@legis.wi.gov**  
Carbon copy (CC) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Private right of action for underage alcohol violations; underage exceptions for law enforcement for compliance checks

**Instructions:**

Redraft of 2011 LRB-1803, as amended by a2231 and a2234

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 9/26/2012	kfollett 10/3/2012		_____			
/P1		11/5 f 2/1	10/3/2012	_____	mbarman 10/3/2012		

FE Sent For:

<END>

**2013 DRAFTING REQUEST**

**Bill**

Received: **9/24/2012** Received By: **agary**  
 Wanted: **As time permits** Companion to LRB:  
 For: **Andre Jacque (608) 266-9870** By/Representing: **Michael Murphy**  
 May Contact: Drafter: **agary**  
 Subject: **Beverages** Addl. Drafters:  
 Extra Copies:

Submit via email: **YES**  
 Requester's email: **Rep.Jacque@legis.wi.gov**  
 Carbon copy (CC) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Private right of action for underage alcohol violations; underage exceptions for law enforcement for compliance checks

**Instructions:**

Redraft of 2011 LRB-1803, as amended by a2231 and a2234

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary	1P/15F 10/3		Jan E. PH 10/3/12			

FE Sent For:

<END>



State of Wisconsin  
2011 - 2012 LEGISLATURE

in  
9/26



LRB-120312-0138/P1  
ARG:sbb&cjs:jf

3  
2  
2011 ASSEMBLY BILL 464

RMNR

D-Note

January 9, 2012 - Introduced by Representatives JACQUE, BIES, KLEEFISCH, A. OTT, PRIDEMORE, SPANBAUER and WYNN, cosponsored by Senators GALLOWAY, KEDZIE and HOLPERIN. Referred to Committee on Judiciary and Ethics.

Regen

1

2

AN ACT *to create* 125.07 (4) (f) of the statutes; **relating to:** alcohol beverages violations *involving* by underage persons on licensed premises.

***Analysis by the Legislative Reference Bureau***

Under current law, with limited exceptions, a person who has not attained the legal drinking age of 21 years may not: 1) procure or attempt to procure alcohol beverages from an alcohol beverages licensee or permittee; 2) possess or consume alcohol beverages on premises for which an alcohol beverages license has been issued (licensed premises), unless accompanied by a parent, guardian, or spouse who has attained the legal drinking age; 3) enter, knowingly attempt to enter, or be on licensed premises unless authorized by statute to do so; or 4) falsely represent his or her age for the purpose of receiving alcohol beverages from an alcohol beverages licensee or permittee (underage violation). A person who commits an underage violation is subject to various penalties, including a forfeiture ranging in amount from \$250 to \$1,000 depending on the number of prior underage violations the person has committed.

This bill provides alcohol beverages licensees with a private right of action against persons who engage in conduct that constitutes an underage violation. Under the bill, a licensee may bring a civil action against such an underage person and, if judgment is entered in favor of the licensee, the court must award to the licensee damages in the amount of \$1,000, plus costs and reasonable attorney fees. However, if the underage person is less than 18 years of age and not emancipated, the licensee brings the action against the parent or legal guardian of the underage person instead. The licensee has the burden of proving that the underage person's

insert  
ANAL

**ASSEMBLY BILL 464**

~~conduct constituted an underage violation, but the action may be brought regardless of whether the underage person received a citation for, or was convicted of, the violation. Before a licensee may bring an action, the licensee must provide notice of its intent to bring an action and the notice must include a demand for the monetary relief that would be available if the action were brought.~~

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

<sup>#</sup>  
SECTION 1. 125.07 (4) (f) of the statutes is created to read:

125.07 (4) (f) 1. Except as provided in subd. 2., and subject to subd. 3., if an underage person engages in conduct that violates par. (a) on the premises of a licensee, the licensee may bring a civil action against the underage person. If judgment is entered in favor of the licensee, the court shall award to the licensee damages in the amount of \$1,000 and, notwithstanding s. 814.04 (1), the costs of the action, including reasonable attorney fees. A licensee may bring an action under this paragraph regardless of whether the underage person has been convicted of, or received a citation for, the violation of par. (a), but the licensee has the burden of proving, by a preponderance of the evidence, that the underage person's conduct was in violation of par. (a).

2. If the underage person who engages in conduct that violates par. (a) on the licensee's premises is less than 18 years of age and is not an emancipated minor, the licensee may bring the civil action against the underage person's parent, as defined in s. 46.56 (1) (j).

3. A licensee may not bring a civil action under this paragraph unless the licensee has first provided notice to the underage person or the underage person's parent, as applicable, of the licensee's intent to bring the action. The notice shall be mailed to the last-known address of the underage person or underage person's

## ASSEMBLY BILL 464

1 parent, as applicable, at least 15 days prior to filing the action and shall include a  
2 demand for the relief described in subd. 1. The department may, by rule, prescribe  
3 a form for this notice.  
4

**SECTION 2. Initial applicability.**

(1) ~~This act~~ first applies to violations of section 125.07 (4) (a) of the statutes  
committed on the effective date of this subsection.

(END)

The treatment of section 125.07 (4) (f)  
of the statutes

D-Note

**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0138/P1ins

ARG:.....

**INSERT ANAL:**

Under current law, an alcohol beverages licensee (retailer) may not procure for, sell, or otherwise provide alcohol beverages to a person who has not attained the legal drinking age of 21 and who is not accompanied by his or her parent, guardian, or spouse who is at least age 21 (unaccompanied underage person) or, with various exceptions, permit an unaccompanied underage person to enter or be on a retail licensed premises (retailer underage violation). A retailer has a defense to a retailer underage violation if the retailer shows that: 1) the underage person falsely represented his or her age to be at least 21; 2) the appearance of the underage person was such that an ordinary and prudent person would believe that the underage person was at least 21; 3) the retailer acted in good faith and in reliance on the representation and appearance of the underage person in the belief that the underage person was at least 21; and 4) the underage person supported his or her representation with identification showing his or her age to be at least 21.

Also under current law, an unaccompanied underage person may not: 1) procure or attempt to procure alcohol beverages from a retailer; 2) possess or consume alcohol beverages on licensed retail premises; 3) enter or be on licensed retail premises, subject to various exceptions; or 4) falsely represent his or her age to obtain alcohol beverages from a retailer (underage violation). A person who commits an underage violation is subject to various penalties, including a forfeiture ranging in amount from \$250 to \$1,000 depending on the number of prior underage violations the person has committed.

This bill provides retailers with a private right of action against underage persons who commit underage violations. Under the bill, a retailer may bring a civil action against an underage person who commits an underage violation on the retailer's licensed premises if the retailer has not been convicted of or cited for a retailer underage violation related to the same incident giving rise to the underage violation, unless the retailer has a defense to the retailer underage violation. If a retailer brings a civil action against an underage person based on the underage violation and judgment is entered in favor of the retailer, the court must award to the retailer damages in the amount of \$1,000, plus costs and reasonable attorney fees. However, if the underage person is less than 18 years of age and not emancipated, the retailer brings the action against the parent or legal guardian of the underage person instead. The retailer has the burden of proving that the underage person's conduct constituted an underage violation, but the action may be brought regardless of whether the underage person received a citation for, or was convicted of, the underage violation. Before a retailer may bring an action, the retailer must provide notice of its intent to bring an action and the notice must include a demand for the monetary relief that would be available if the action were brought.

The bill also creates an exception allowing an unaccompanied underage person to enter or be on licensed retail premises if the underage person is employed by or

✓  
assisting a law enforcement agency in enforcing or investigating underage violations or retailer underage violations. The bill also specifies that laws relating to underage violations, and prohibiting an unaccompanied underage person from knowingly possessing or consuming alcohol beverages, do not apply to an underage person employed by or assisting a law enforcement agency in enforcing or investigating underage violations or retailer underage violations.



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRBa2231/1  
ARG:kjf:jf

**ASSEMBLY AMENDMENT 1,  
TO 2011 ASSEMBLY BILL 464**

February 2, 2012 - Offered by Representative JACQUE.

At the locations indicated, amend the bill as follows:

1. Page 2, line 1: before that line insert:

SECTION ~~1c.~~ 125.07 (3) (a) 15. of the statutes is created to read:

125.07 (3) (a) 15. An underage person employed by or assisting a law enforcement agency in carrying out enforcement activities to determine compliance with, or investigate potential violations of, the provisions of this section.

SECTION ~~1g.~~ 125.07 (4) (bg) of the statutes is created to read:

125.07 (4) (bg) Paragraphs (a) and (b) do not apply to an underage person employed by or assisting a law enforcement agency in carrying out enforcement activities to determine compliance with, or investigate potential violations of, the provisions of this section.

2. Page 2, line 1: delete "SECTION 1" and substitute "SECTION 1m"

(END)



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRBa2234/1  
ARG:kjf:jf

**ASSEMBLY AMENDMENT 2,  
TO 2011 ASSEMBLY BILL 464**

February 2, 2012 - Offered by Representative JACQUE.

1 At the locations indicated, amend the bill as follows:

2 ~~1. Page 2, line 2: delete "subd. 3." and substitute "subds. 3. and 4."~~

3 ~~2. Page 3, line 3: after that line insert.~~

4 4. A licensee may not bring a civil action under this paragraph if the licensee  
5 has been convicted of, or received a citation for or been charged with, a violation of  
6 sub. (1) or (3) related to the same incident, occurrence, or conduct giving rise to the  
7 underage person's violation of par. (a), unless the licensee is entitled to a defense  
8 under sub. (6). A licensee that asserts a defense under sub. (6) has the burden of  
9 proving the defense by a preponderance of the evidence.

10

(END)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0138/P1dn

ARG: *leg*

*Date*

ATTN: Michael Murphy

Please review the attached draft carefully to ensure that it is consistent with your intent.

2011 Wisconsin Act 92 created s. 814.045<sup>✓</sup>, which includes a presumption that the recovery of reasonable attorney fees in actions where compensatory damages are awarded is limited to no more than three times the amount of the compensatory damages. I believe that the \$1,000 damage award under created s. 125.07 (4) (f)<sup>✓</sup> 1. is properly classified as statutory damages, not compensatory damages, and therefore I do not believe that the "three-times" limitation in s. 814.045 would apply. Accordingly, I have not modified created s. 125.07 (4) (f) 1. in this draft to address s. 814.045 (2)<sup>✓</sup> created in Act 92.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: aaron.gary@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0138/P1dn  
ARG:kjf:jm

October 3, 2012

ATTN: Michael Murphy

Please review the attached draft carefully to ensure that it is consistent with your intent.

2011 Wisconsin Act 92 created s. 814.045, which includes a presumption that the recovery of reasonable attorney fees in actions where compensatory damages are awarded is limited to no more than three times the amount of the compensatory damages. I believe that the \$1,000 damage award under created s. 125.07 (4) (f) 1. is properly classified as statutory damages, not compensatory damages, and therefore I do not believe that the "three-times" limitation in s. 814.045 would apply. Accordingly, I have not modified created s. 125.07 (4) (f) 1. in this draft to address s. 814.045 (2) created in Act 92.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "1" draft.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: aaron.gary@legis.state.wi.us

**Gary, Aaron**

---

**From:** Julian, Jamie  
**Sent:** Thursday, January 31, 2013 4:16 PM  
**To:** Gary, Aaron  
**Subject:** RE: Draft review: LRB -0138/P1 Topic: Private right of action for underage alcohol violations; underage exceptions for law enforcement for compliance checks

Hello,

Please convert this to an introducible /1 format.

Sincerely,

*Jamie Julian*

Office of Rep. André Jacque  
2<sup>nd</sup> Assembly District

Room 123 West  
State Capitol  
P.O. Box 8953  
Madison, WI 53708

(608) 266-9870

---

**From:** LRB.Legal  
**Sent:** Wednesday, October 03, 2012 1:08 PM  
**To:** Rep.Jacque  
**Subject:** Draft review: LRB -0138/P1 Topic: Private right of action for underage alcohol violations; underage exceptions for law enforcement for compliance checks

**Following is the PDF version of draft LRB -0138/P1 and drafter's note.**



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0138001  
ARG:kjf:jm

in  
2/1

TODAY

RMN

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

No changes

Rezen

1 AN ACT *to create* 125.07 (3) (a) 15., 125.07 (4) (bg) and 125.07 (4) (f) of the  
2 statutes; **relating to:** alcohol beverages violations involving underage persons  
3 on licensed premises.

***Analysis by the Legislative Reference Bureau***

Under current law, an alcohol beverages licensee (retailer) may not procure for, sell, or otherwise provide alcohol beverages to a person who has not attained the legal drinking age of 21 and who is not accompanied by his or her parent, guardian, or spouse who is at least age 21 (unaccompanied underage person) or, with various exceptions, permit an unaccompanied underage person to enter or be on a retail licensed premises (retailer underage violation). A retailer has a defense to a retailer underage violation if the retailer shows that: 1) the underage person falsely represented his or her age to be at least 21; 2) the appearance of the underage person was such that an ordinary and prudent person would believe that the underage person was at least 21; 3) the retailer acted in good faith and in reliance on the representation and appearance of the underage person in the belief that the underage person was at least 21; and 4) the underage person supported his or her representation with identification showing his or her age to be at least 21.

Also under current law, an unaccompanied underage person may not: 1) procure or attempt to procure alcohol beverages from a retailer; 2) possess or consume alcohol beverages on licensed retail premises; 3) enter or be on licensed retail premises, subject to various exceptions; or 4) falsely represent his or her age to obtain alcohol beverages from a retailer (underage violation). A person who commits an underage violation is subject to various penalties, including a forfeiture

ranging in amount from \$250 to \$1,000 depending on the number of prior underage violations the person has committed.

This bill provides retailers with a private right of action against underage persons who commit underage violations. Under the bill, a retailer may bring a civil action against an underage person who commits an underage violation on the retailer's licensed premises if the retailer has not been convicted of or cited for a retailer underage violation related to the same incident giving rise to the underage violation, unless the retailer has a defense to the retailer underage violation. If a retailer brings a civil action against an underage person based on the underage violation and judgment is entered in favor of the retailer, the court must award to the retailer damages in the amount of \$1,000, plus costs and reasonable attorney fees. However, if the underage person is less than 18 years of age and not emancipated, the retailer brings the action against the parent or legal guardian of the underage person instead. The retailer has the burden of proving that the underage person's conduct constituted an underage violation, but the action may be brought regardless of whether the underage person received a citation for, or was convicted of, the underage violation. Before a retailer may bring an action, the retailer must provide notice of its intent to bring an action and the notice must include a demand for the monetary relief that would be available if the action were brought.

The bill also creates an exception allowing an unaccompanied underage person to enter or be on licensed retail premises if the underage person is employed by or assisting a law enforcement agency in enforcing or investigating underage violations or retailer underage violations. The bill also specifies that laws relating to underage violations, and prohibiting an unaccompanied underage person from knowingly possessing or consuming alcohol beverages, do not apply to an underage person employed by or assisting a law enforcement agency in enforcing or investigating underage violations or retailer underage violations.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1                   SECTION 1. 125.07 (3) (a) 15. of the statutes is created to read: ✓

2                   125.07 (3) (a) 15. An underage person employed by or assisting a law  
3 enforcement agency in carrying out enforcement activities to determine compliance  
4 with, or investigate potential violations of, the provisions of this section.

5                   SECTION 2. 125.07 (4) (bg) of the statutes is created to read: ✓

6                   125.07 (4) (bg) Paragraphs (a) and (b) do not apply to an underage person  
7 employed by or assisting a law enforcement agency in carrying out enforcement

1 activities to determine compliance with, or investigate potential violations of, the  
2 provisions of this section. ✓

3 **SECTION 3.** 125.07 (4) (f) of the statutes is created to read:

4 125.07 (4) (f) 1. Except as provided in subd. 2., and subject to subds. 3. and 4.,  
5 if an underage person engages in conduct that violates par. (a) on the premises of a  
6 licensee, the licensee may bring a civil action against the underage person. If  
7 judgment is entered in favor of the licensee, the court shall award to the licensee  
8 damages in the amount of \$1,000 and, notwithstanding s. 814.04 (1), the costs of the  
9 action, including reasonable attorney fees. A licensee may bring an action under this  
10 paragraph regardless of whether the underage person has been convicted of, or  
11 received a citation for, the violation of par. (a), but the licensee has the burden of  
12 proving, by a preponderance of the evidence, that the underage person's conduct was  
13 in violation of par. (a).

14 2. If the underage person who engages in conduct that violates par. (a) on the  
15 licensee's premises is less than 18 years of age and is not an emancipated minor, the  
16 licensee may bring the civil action against the underage person's parent, as defined  
17 in s. 46.56 (1) (j).

18 3. A licensee may not bring a civil action under this paragraph unless the  
19 licensee has first provided notice to the underage person or the underage person's  
20 parent, as applicable, of the licensee's intent to bring the action. The notice shall be  
21 mailed to the last-known address of the underage person or underage person's  
22 parent, as applicable, at least 15 days prior to filing the action and shall include a  
23 demand for the relief described in subd. 1. The department may, by rule, prescribe  
24 a form for this notice.

4. A licensee may not bring a civil action under this paragraph if the licensee has been convicted of, or received a citation for or been charged with, a violation of sub. (1) or (3) related to the same incident, occurrence, or conduct giving rise to the underage person's violation of par. (a), unless the licensee is entitled to a defense under sub. (6). A licensee that asserts a defense under sub. (6) has the burden of proving the defense by a preponderance of the evidence.

#### SECTION 4. Initial applicability.

(1) The treatment of section 125.07 (4) (f) of the statutes first applies to violations of section 125.07 (4) (a) of the statutes committed on the effective date of this subsection.

**(END)**

**Parisi, Lori**

---

**From:** Julian, Jamie  
**Sent:** Monday, February 25, 2013 12:24 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -0138/1 Topic: Private right of action for underage alcohol violations; underage exceptions for law enforcement for compliance checks

Jamie Julian – 266-9870

Please Jacket LRB -0138/1 for the ASSEMBLY.